

1                   BEFORE THE COMMISSIONER OF POLITICAL PRACTICES  
2                   STATE OF MONTANA

3  
4           IN THE MATTER OF THE CIVIL  
5           PENALTY IMPOSED AGAINST  
6           THE MONTANA AREA AGENCIES  
7           ON AGING

8  
9                   FINDINGS OF FACT, CONCLUSIONS OF LAW,  
10                  ORDER, AND MEMORANDUM OPINION

11           These informal contested case proceedings were filed before the Commissioner  
12 of Political Practices (Commissioner) to consider the appeal of the principal  
13 referenced above. Pursuant to the provisions of § 5-7-306, MCA, the principal  
14 appealed the Commissioner's assessment of a civil penalty resulting from its late  
15 filing of a lobbying disclosure report. The principal filed a written Waiver of  
16 Hearing waiving its right to an in-person hearing, and submitted a written statement  
17 for the Commissioner's consideration.

18           Based on the written submissions of the principal, the documents of record in the  
19 Commissioner's file, and the applicable law, the Commissioner makes the following  
20 findings of fact, conclusions of law, and order.

21                   **FINDINGS OF FACT**

22           1. The Montana Area Agencies on Aging is a principal registered with the  
23 Commissioner.

24           2. The 2003 Montana Legislature passed House Bill 38 and the governor signed  
25 it into law. The law took effect on February 18, 2003. House Bill 38, now codified  
26 at § 5-7-306, MCA, establishes civil penalties that are required to be assessed  
27 against any person who fails to file lobbying disclosure reports within the time  
required by law.

1       3. The post-Session 2007 lobbying disclosure report for the Montana Area  
2 Agencies on Aging was required to be filed no later than May 29, 2007.

3       4. On May 16, 2007 the office of the Commissioner sent an email to all  
4 principals, including the Montana Area Agencies on Aging. The email advised  
5 principals that a post-Session 2007 lobbying financial disclosure report was required  
6 to be filed by May 29, 2007. The email referenced the appropriate form that was  
7 required to be filed, known as a form L-5A, and noted that it was available for  
8 download on the Commissioner's website. Citing the provisions of § 5-7-208(4),  
9 MCA, the email stated: "A report must be filed in this office even though neither  
10 lobbying nor incurring of lobbying expenses may have occurred."

11       5. The Montana Area Agencies on Aging failed to file its L-5A on or before  
12 May 29, 2007.

13       6. On May 30, 2007, the Commissioner sent a letter to Jim Atkinson stating that  
14 the post-Session L-5A report was due May 29, 2007, but had not been received. The  
15 letter stated that a civil penalty started being assessed on May 30, 2007, at \$50 per  
16 day, and would continue until the report was filed or until the penalty amount  
17 reached \$2,500. The letter urged the principal to fax the delinquent report  
18 immediately, followed by a hard copy.

19       7. On May 30, 2007, the principal filed its report. Because the report was filed  
20 one business day late, a \$50 civil penalty was assessed.

21       8. The Montana Area Agencies on Aging requested a hearing to contest the civil  
22 penalty. The Commissioner issued a Notice of Agency Action and Opportunity for Hearing  
23 on August 9, 2007. The Montana Area Agencies on Aging filed a written Waiver of  
24 Hearing and submitted a written statement for the Commissioner's consideration.

25       9. In a written statement Jim Atkinson asked on behalf of the Montana Area  
26 Agencies on Aging that the penalty be waived because he was unable to meet the  
27 filing deadline due to a death in his family.

## CONCLUSIONS OF LAW

1. The Commissioner has jurisdiction over this matter pursuant to §§ 2-4-604 and 5-7-306, MCA.

2. Notice of the hearing was provided as required by law. § 2-4-601, MCA.

3. § 5-7-306, MCA, provides:

**Civil penalties for delays in filing -- option for hearing --**

**suspension of penalty.** (1) In addition to any other penalties or remedies established by this chapter, a person who fails to file a report within the time required by this chapter is subject to a civil penalty of \$50 for each working day that the report is late until the report is filed or until the penalties reach a maximum of \$2,500 for each late report.

The person against whom a penalty is assessed may request an informal contested case hearing before the Commissioner. At the hearing, the Commissioner is required to consider any factors or circumstances in mitigation, and may reduce or waive the civil penalty. § 5-7-306(3), MCA.

4. § 5-7-208(2)(c), MCA, requires a lobbying disclosure report to be filed with the Commissioner “no later than 30 days following adjournment of a legislative session,” and the report must include “all payments made during the session, except as previously reported.” If payments are not made during a reporting period, the report shall state that fact. § 5-7-208(4), MCA.

## MEMORANDUM OPINION

Information offered in a written statement by Jim Atkinson is compelling. He stated that filing the report late was a result of a death in his family. Consideration of these circumstances leads me to conclude that waiver of the civil penalty is appropriate in this case. However, I urge principals to carefully review and understand the statutory filing requirements to ensure that they comply with the law and to avoid the assessment of civil penalties in the future.

1  
2  
3 **ORDER**

4 THEREFORE, IT IS HEREBY ORDERED that the Montana Area Agencies on  
5 Aging civil penalty of \$50 is waived.

6 DATED this 19<sup>th</sup> day of October, 2007.

7 

8 Dennis Unsworth  
9 Commissioner of Political Practices

10 **NOTICE:** This is a final decision in a contested case. You have the right to seek  
11 judicial review of this decision pursuant to the provisions of Mont. Code Ann. §§ 2-  
12 4-701 through 2-4-711.

13 **CERTIFICATE OF SERVICE**

14 I hereby certify that I caused a true and accurate copy of the foregoing FINDINGS OF FACT,  
15 CONCLUSIONS OF LAW, ORDER, AND MEMORANDUM OPINION to be mailed to:

16 Jim Atkinson  
17 Montana Area Agencies on Aging  
18 160 Kelly Rd.  
19 Kalispell MT 59901

20 DATED: October 19th, 2007

21   
22 Mary Baker  
23 Program Supervisor